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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,845	01/17/2006	Tatsuo Hoshino	21419 US C038435/0185660	2036
Stephen M Haracz Bryan Cave 1290 Avenue of the Americas New York, NY 10104-3300			EXAMINER CHOWDHURY, IQBAL HOSSAIN	
			ART UNIT 1652	PAPER NUMBER
			MAIL DATE 03/26/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/528,845	Applicant(s) HOSHINO ET AL.
Examiner IQBAL H. CHOWDHURY	Art Unit 1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 11 March 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: 14 and 15.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1, 4-7 and 9-11.
 Claim(s) withdrawn from consideration: 3, 8, 12-13.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Rebecca E. Prouty/
Primary Examiner, Art Unit 1652

Continuation of 3. NOTE: amendment to claims 1 and 4 (part (b), (c) and (d)) now have changed the scope of claims 1 and 4, i.e. the recitation "a DNA sequence encoding a polypeptide having vitamin B6 phosphate phosphatase activity, wherein said polypeptide is at least 95% identical to the amino acid sequence of SEQ ID NO: 10" or "a DNA sequence ----- and at least 95% identical to the DNA sequence of SEQ ID NO: 9 or which will hybridize to SEQ ID NO:9 under specific conditions". The changing sequence identity from 70% to 95% and inclusion of particular hybridization conditions, needs more analysis, evaluation of the search results and further consideration. Besides, recitation of "95%" raises 112 1st New Matter issues.

Continuation of 11. does NOT place the application in condition for allowance because: all the previous rejections except 103 rejection are maintained in view of non-entry of the amendments. The 103 rejection is withdrawn in view of applicants arguments regarding foreign priority documents of the instant application. The Examiner acknowledges the foreign priority document and granted the effective filing date of 9/27/2002, which results disqualification of Jang et al. reference that is not a prior art. Previous rejections of Claims 1, 4-7, and 9-11 under 35 U.S.C. 112, first paragraph, enablement issues would not be overcome by the amendments to the claims because hybridizing washing steps are still broad in the context of "50oC" because washing at 50oC is not enough highly stringent condition, which would allow nucleic acid molecule having large number of modifications including fragments and variants to remain bound to SEQ ID NO: 9. The Examiner acknowledges applicants lengthy arguments but the arguments are not correlated with what is written in the claims. Therefore, the rejections on written description and scope of enablement are maintained.